

## IS DPHHS 'PRACTICE' OF DENYING ACCESS TO DAY CARE FACILITIES CONSTITUTIONAL?

### Constitution of Montana -- Article II -- DECLARATION OF RIGHTS

**Section 3. Inalienable rights.** All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities.

### Constitution of Montana -- Article II -- DECLARATION OF RIGHTS

**Section 4. Individual dignity.** The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.

### Constitution of Montana -- Article II -- DECLARATION OF RIGHTS

**Section 5. Freedom of religion.** The state shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.

### Constitution of Montana -- Article II -- DECLARATION OF RIGHTS

**Section 17. Due process of law.** No person shall be deprived of life, liberty, or property without due process of law.

### United States Constitution

**Amendment 14 - Citizenship Rights.** Ratified 7/9/1868. *Note History*

1. ...No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

### SUMMARY

All US citizens and Montana residents are guaranteed equal protection under the law regardless of religious ideas. As specifically stated in Article II Section 4 of the Montana Constitution the state and institutions 'shall not discriminate against any person in the exercise of their civil rights on account of 'religious ideas'.

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Our Constitutions repeatedly protect religious freedoms. Amendment 14 of the US Constitution specifically says that States can NOT 'deprive any person of ... liberty ... without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

DPHHS current practice of denying children admission to day care facilities based upon the parents' religious beliefs against vaccinations has not come about by 'due process of law'. Quite the contrary there is no law in Montana which states that this practice is legal or acceptable. As a matter of fact DPHHS administrative rules do not even state that DPHHS is allowed this practice.

They claim that because there is no law specifically forcing them to allow religiously exempt children into day care, it is therefore legal for them to deny access to the same even though this practice is clearly in violation of both of our treasured Constitutions.

Our Constitutions require that DPHHS must go through 'due process of law' before our unalienable right to free exercise of religion in any setting including day care can be denied. They have not done this. There is no law in place allowing them to discriminate in day care admissions. Why haven't they pursued getting this law through the legislature or even put it into their administrative rules? Good question, it is because they know they cannot prove that denying admission to day cares based religious convictions against vaccinations is in fact 'for the good of the whole'. They cannot prove, either in court or to the legislature, that religiously exempt children pose a greater danger of contracting and spreading disease than do children without religious exemptions.

Constitutionally and legally it is NOT a parent's responsibility to prove that their children should not be denied access to day care facilities. On the contrary the burden of proving that religiously exempt children should be denied access to day care facilities via due process of law (i.e. the actual passing of a law) rests with DPHHS. They have not followed due process.

HB 227 will stop DPHHS from practicing this unconstitutional and discriminatory practice. I respectfully urge you to uphold your oath to our Constitutions and protect our liberties and rights contained therein from the abuses of this governmental agency. Please vote yes on HB 227. Thank you.